

STATE OF TENNESSEE

Office of the Attorney General



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June 3, 2004

Honorable Deborah Taylor Tate  
Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

**RE: UNITED CITIES GAS COMPANY, a Division of ATMOS ENERGY  
CORPORATION, INCENTIVE PLAN ACCOUNT (IPA) AUDIT  
Docket No.: 01-00704**

Dear Chairman Tate:

Enclosed is an original and thirteen copies of the Consumer Advocate's Renewed Motion To Summarily Deny Motion To Approve Settlement And Alternatively To Treat The Motion As A Motion For Summary Judgment. Kindly file the attached in this docket. By copy of this letter, we are serving all parties of record. If you have any questions, please feel free to contact me at (615) 741-8700. Thank you

Sincerely,

A handwritten signature in black ink, appearing to read "Russell T. Perkins".

Russell T. Perkins  
Deputy Attorney General

Enclosures

cc: All Parties of Record

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**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
AT NASHVILLE, TENNESSEE**

<b>IN RE:</b>	)	
	)	
<b>UNITED CITIES GAS COMPANY, a Division of</b>	)	<b>DOCKET NO.</b>
<b>ATMOS ENERGY CORPORATION,</b>	)	<b>01-00704</b>
<b>INCENTIVE PLAN ACCOUNT (IPA) AUDIT</b>	)	

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**CONSUMER ADVOCATE’S RENEWED MOTION TO SUMMARILY  
DENY MOTION TO APPROVE SETTLEMENT AND ALTERNATIVELY  
TO TREAT THE MOTION AS A MOTION FOR SUMMARY JUDGMENT**

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Given the Hearing Officer’s ruling on June 2, 2004, that the hearing on June 8, 2004, will be an evidentiary hearing, the Consumer Advocate Division (“CAD”) renews its prior oral motions requesting that this Court summarily deny the motion of the Staff and Atmos to approve the proposed settlement (filed March 8, 2004). In the alternative, the motion to approve the proposed settlement should be treated as a motion for summary judgment and denied.

Summary Denial

All of the parties do not agree to the settlement. Consequently, it should be denied. *See, Harbour v Brown for Ulrich*, 732 S.W.2d 598, 599 (Tenn. 1987). For grounds in support of this motion, the CAD relies on and fully incorporates herein by reference the following:

1. Consumer Advocate’s Objection To The Motion For Approval Of Settlement Agreement Filed By Atmos Energy Corporation And The Staff of the Tennessee Regulatory Authority, pps. 1-6.

2. The Consumer Advocate Division's Reply Opposing Approval Of The Proposed Settlement, pps. 1-2.

### Summary Judgment

If the motion for approval of the settlement is not summarily denied, then the motion is, in effect, an affirmative motion for judgment over the CAD's objection. *See* Rules 56.01, 56.04 and 56.06, Tennessee Rules of Civil Procedure. In short, the CAD's failure to join the motion for approval of the settlement converts it into a motion for summary judgment in substance.<sup>1</sup> This court, therefore, should convene a non-evidentiary hearing and apply summary judgment standards *See Byrd v Hall*, 847 S.W.2d 208, 211 (Tenn. 1993). If the Staff and Atmos are insisting on a judgment — by motion — over the CAD's objection, the motion seeking that relief is essentially a “back door” summary judgment motion.<sup>2</sup> In the summary judgment context, an evidentiary hearing is not appropriate. The hearing on June 8, therefore, should be non-evidentiary.

Under the summary judgment standard, this Court should deny the joint motion for relief by the Staff and Atmos. This is particularly true, moreover, given the administrative deference owed the CAD, as the statutorily created successor to the section of the former Public Service Commission which provided expertise and advocacy to further the interests of consumers. There

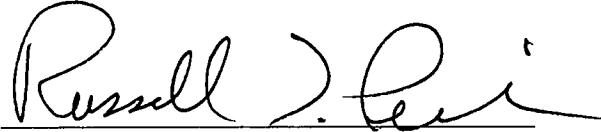
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<sup>1</sup>“These rules shall be construed to secure the just, speedy and inexpensive determination of every action ” Rule 1, Tennessee Rules of Civil Procedure.

<sup>2</sup>To proceed in any other fashion, moreover, would be to unjustly and inappropriately elevate form over substance. *See Usrey v. Lewis*, 553 S.W.2d 612, 614 (Tenn.App. 1977); *Lewis v Allen*, 698 S.W.2d 58, 59 (Tenn. 1985); *Tennessee Farmers Mutual Insurance Company v. Farmer*, S.W.2d 453, 454-455 (Tenn. 1998)

are clearly genuine issues as to the material facts and the proponents, in any event, have not come close to showing that they are entitled to the unprecedented relief<sup>3</sup> they seek as a matter of law.

Respectfully submitted,



RUSSELL T. PERKINS  
B.P.R. No. 10282  
Deputy Attorney General  
Office of the Attorney General  
Consumer Advocate and Protection Division  
(615) 741-1376

**CERTIFICATE OF SERVICE**

I hereby certify that on June 2, 2004, a true and exact copy of the foregoing document has been mailed, first class U.S. postage prepaid, and faxed to the following:

Joe A. Conner  
Baker, Donelson, Bearman & Caldwell, P.C.  
1800 Republic Centre  
633 Chestnut Street  
Chattanooga, Tennessee 37450-1800

Randal Gilliam  
Office of Legal Counsel  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243-0505



Russell T. Perkins

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<sup>3</sup>The proponents are seeking unprecedented relief before the TRA, such as attempting to include transportation costs, using the maximum FERC rate as a benchmark and purporting to have a tariff become effective three years before it was approved.